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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: VOLKSWAGEN 'CLEAN DIESEL'  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION

MDL No. 02672-CRB (JSC)

This document relates to:

*Napleton Orlando Imports, LLC et al. v.  
Volkswagen Group of America, Inc. et al.,  
Case No. 1:16-cv-04071 (N.D. Ill.)*

DECLARATION OF STEVE W.  
BERMAN IN SUPPORT OF PLAINTIFF  
J. BERTOLET, INC.'S NOTICE OF  
MOTION, MOTION, AND  
MEMORANDUM IN SUPPORT OF  
PRELIMINARY APPROVAL OF  
FRANCHISE DEALER SETTLEMENT  
AGREEMENT, PROVISIONAL  
CERTIFICATION OF DEALER  
SETTLEMENT CLASS, AND  
APPROVAL OF CLASS NOTICE

NAPLETON ORLANDO IMPORTS, LLC  
d/b/a NAPLETON'S VOLKSWAGEN OF  
ORLANDO, an Illinois limited liability company,  
NAPLETON SANFORD IMPORTS, LLC d/b/a  
NAPLETON'S VOLKSWAGEN OF SANFORD,  
an Illinois limited liability company, and  
NAPLETON AUTOMOTIVE OF URBANA,  
LLC d/b/a NAPLETON VOLKSWAGEN OF  
URBANA, a Florida limited liability company,  
individually, and J. BERTOLET, INC. dba J.  
BERTOLET VOLKSWAGEN, on behalf of itself  
and all similarly situated persons and entities,

Hearing: October 18, 2016  
Time: 8:00 a.m.  
Court: 6, 17th Floor

The Honorable Charles R. Breyer

Plaintiffs,

1 v.

2 VOLKSWAGEN GROUP OF AMERICA, INC., a  
3 New Jersey Corporation, VW CREDIT, INC., a  
4 Delaware corporation, VOLKSWAGEN AG, a  
5 German corporation, ROBERT BOSCH, LLC, a  
Michigan limited liability company, and ROBERT  
BOSCH GmbH, a German corporation.

6 Defendants.  
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1 I, STEVE W. BERMAN, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of  
3 Washington, and I have been admitted *pro hac vice* in this action. I am the managing partner of  
4 Hagens Berman Sobol Shapiro LLP. I am personally familiar with the facts set forth in this  
5 declaration. If called as a witness, I could and would competently testify to the matters stated  
6 herein.

7 2. On April 6, 2016, Napleton Orlando Imports, LLC dba Napleton's Volkswagen of  
8 Orlando, Napleton's Sanford Imports, LLC dba Napleton's Volkswagen of Sanford, and Napleton  
9 Automotive of Urbana, LLC dba Napleton Volkswagen of Urbana (collectively, the "Napleton VW  
10 Dealerships") filed a Class Action Complaint against Volkswagen and Bosch in the Northern  
11 District of Illinois (*Napleton Orlando Imports, LLC et al. v. Volkswagen Group of America, Inc. et*  
12 *al.*, Case No. 1:16-cv-04071 (N.D. Ill.) (the "Napleton Action"). On April 20, 2016, the Napleton  
13 Action was transferred to this MDL for pre-trial proceedings.

14 3. Prosecution of a remedy for Volkswagen-branded franchise dealers followed two  
15 distinct, but ultimately merged, tracks. First, from soon after the disclosure of the emissions fraud,  
16 Volkswagen-branded dealers nominated a "Dealer Investment Committee" ("DIC") to engage  
17 Volkswagen in discussions concerning an appropriate remedy for U.S. franchise dealers to  
18 compensate them for the substantial losses they were experiencing—and which were increasing—  
19 as a result of the emissions scandal. The DIC engaged Bass Sox Mercer ("BSM"), one of proposed  
20 Dealer Class Counsel, to represent it in negotiations with Volkswagen.

21 4. Second, my firm, Hagens Berman ("HB"), counsel for Napleton Dealerships and  
22 also proposed Dealer Class Counsel, began extensive pre-filing investigation and research early in  
23 2016 and continued it until shortly before filing the Napleton Action. Thereafter, HB multiplied its  
24 efforts in developing a complete picture of the emissions fraud as related to franchise dealer claims  
25 and the damages flowing therefrom, including engaging noted economic and damages experts.  
26 And given the extensive value expected, and then confirmed, for the Consumer Lawsuits, HB took  
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1 great care to assess Volkswagen's ability to pay damages to dealers, and its need for dealer  
2 cooperation in effectuating the then-expected settlement of the Consumer Lawsuits.

3 5. On July 18, 2016, HB sent Volkswagen a request for dealer-specific document  
4 discovery. The requested documents included historical dealer-by-dealer vehicle deliveries,  
5 composite financial statements, Units in Operation figures, buy/sale agreements, and several  
6 categories of internal communications and reports relating to the projected impact on dealers from  
7 the emissions scandal.

8 6. On July 20, 2016, HB sent Volkswagen its second request for documents, including  
9 documents relating to: dealer inventory of TDI vehicles, Letters of Intent for potential new  
10 dealerships and projections for such new dealerships, marketing planning and budgeting, dealer  
11 and consumer-facing incentive programs, and certain communications between Volkswagen and its  
12 dealers.

13 7. Beginning on July 22, 2016, and continuing thereafter, Volkswagen electronically  
14 produced thousands of pages of documents, including detailed spreadsheets and financial records.  
15 Attorneys at HB reviewed the entire production, and certain portions were shared with HB's  
16 retained damages and economic experts. In addition, attorneys at Hagens Berman searched the 12  
17 million-plus pages of electronic discovery produced in the consumer action to retrieve hundreds of  
18 documents that were particularly relevant to the Dealer Action, Volkswagen's knowledge of harm  
19 to dealers, and assessment of damages suffered by dealers.

20 8. In July 2016, after each of BSM and HB had devoted significant, non-overlapping  
21 resources, time and effort to prosecution of franchise dealer claims related to the emissions scandal,  
22 the two firms agreed to work together to efficiently forge the best possible result for all 652  
23 Volkswagen-branded franchise dealers in the proposed Franchise Dealer Class. The two firms  
24 together had multiple meetings with Volkswagen and its attorneys from Sullivan & Cromwell  
25 ("S&C") in New York, and via telephone and electronic communications.

26 9. Also present at the final meeting with Volkswagen were members of the Dealer  
27 Investment Committee ("DIC"). DIC was established at a dealers only meeting to help represent  
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1 the Dealers interest in weathering the scandal. Its members include Jason Kuhn of Tampa's Kuhn  
2 Automotive Group, Mike Sullivan, owner of the LAcarGuy network in southern California, Jimmy  
3 Ellis of Atlanta's Jim Ellis Automotive Group, Richard Fisher, owner of the Evanston, Illinois-  
4 based Autobarn Evanston Dealer Group, and Jack Bertolet, Jr., president of Orwigsburg,  
5 Pennsylvania's J. Bertolet Volkswagen.

6 10. As the settlement talks progressed, and during the document drafting process, we  
7 have consulted with members of the DIC. Their experience as VW dealers has been useful in  
8 negotiating the settlement and making sure it is fair for the proposed class.

9 11. After months of rigorous investigation, research, document review, consultation  
10 with experts, communication and negotiation, a settlement term sheet was agreed to in late August  
11 2016 and shared with the Court's Settlement Master, Robert S. Mueller. Director Mueller  
12 embraced the settlement outline and suggested a prompt presentation to the Court, which occurred  
13 on August 26, 2016. *See* Dkt. No. 1774.

14 12. The Court ordered submission of a final settlement agreement and this motion and  
15 supporting documents on September 30, 2016, setting in motion a further intense flurry of work by  
16 HB, BSM, Volkswagen and its counsel at S&C.

17 13. On September 30, HB and BSM filed the Volkswagen-Branded Franchise Dealer  
18 Amended and Consolidated Class Action Complaint ("Complaint"), adding J. Bertolet, Inc., dba J.  
19 Bertolet Volkswagen as plaintiff and proposed Class Representative. The Complaint spanned 130  
20 pages and set forth in detail the allegations relating to the Franchise Dealer Class claims against  
21 Volkswagen and against the Robert Bosch companies. The Complaint reflects the extensive labors  
22 undertaken by HB and BSM in prosecution of this action.

23 14. On September 30, the Settlement Agreement that Plaintiff now proposes for  
24 approval was completed, agreed and executed.

25 15. I personally know and have met with the proposed Class Representative. He is  
26 committed to the action and has devoted substantial time to assisting counsel with this action,  
27 providing documents and reviewing pleadings.



**CERTIFICATE OF SERVICE**

I hereby certify that on September 30, 2016, I electronically transmitted the foregoing document to the Court Clerk using the ECF System for filing. The Clerk of the Court will transmit a Notice of Electronic Filing to all ECF registrants.

/s/ Steve W. Berman  
STEVE W. BERMAN